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National Marine Fisheries Service

SFA Update

National Marine Fisheries Service August 1997

Changing the National Standards for Fishery Conservation and Management

Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) include changes to existing National Standards and the institution of three new Standards. Congress established the National Standards to be the guiding principles for the management of the Nation's fishery resources, and to be the basis upon which all proposed management programs are to be judged. All fishery management plans (FMPs) and associated management measures prepared by either the Secretary or the Fishery Management Councils must satisfy the management principles established by the National Standards (see MSFCMA §301). At the time that the Standards were enacted, Congress also established a requirement that the Secretary prepare advisory Guidelines. The Guidelines, based on the National Standards, expand on and interpret the National Standards, providing more detailed requirements for management under the Magnuson-Stevens Act. The Guidelines also serve as an aid in the development of FMPs, and as a guide to the Secretary in the review and approval of those FMPs.

The new National Standards established by the SFA include requirements that fishery management programs take into consideration the effects on fishing communities (National Standard 8), that bycatch be reduced (National Standard 9), and that safety of life at sea be promoted (National Standard 10). The SFA changes to existing National Standards, definitions, and substantive provisions also have necessitated significant revisions to the Guidelines for National Standard 1 (optimum yield), and minor revisions to National Standards 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (avoid duplication).

NMFS has developed proposed National Standard Guidelines to reflect the SFA additions and changes. The proposed Guidelines were published in the Federal Register on August 4, 1997 (62 FR 41907). The 45-day comment period for the proposed National Standard Guidelines end September 18, 1997. Following is an overview of the proposed National Standard Guidelines. For details, see the Federal Register notice (available online via GPO Access at <<http://www.acess.gpo.gov/su_docs/aces/aces140.html>>.

National Standard 1 requires that conservation and management measures prevent overfishing but at the same time dictates that they are to achieve the optimum harvest [referred to as Optimum Yield (OY)] from each fishery. Key terms under this standard are Maximum Sustainable Yield (MSY) and OY. MSY is used to describe a healthy stock of fish whose abundance is at such a level that fishermen can continuously take the largest annual catch possible over the long-term without overfishing. MSY, among other things, takes into consideration existing environmental conditions that can limit the overall size of the stock, regardless of the level of fishing. MSY is also important because it is the starting point in the calculation of OY, as required under the Act.

OY is particularly important because it determines the allowable level of harvest or other fishing activity in any given year. The Magnuson-Stevens Act defines OY as an amount of fish that: (1) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into consideration the protection of marine ecosystems; (2) is prescribed as the MSY as reduced by relevant economic, social, or ecological factors; and (3) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in each fishery. The primary changes in the establishment of OY relate to the protection of marine ecosystems, the provision that OY be no greater than MSY, and the requirement that OY to be set for an overfished stock at a level that will allow it to be rebuilt to the MSY level. The proposed Guidelines recommend that OY include all fish killed, including the mortality of all fish that are taken as a result of fishing activity as bycatch or those taken in research activities.

Standard 1 and the Guidelines require management programs to be adjusted when the stock is overfished or it is determined that fishermen are overfishing. In terms of preventing overfishing,the proposed Guidelines suggest that the two primary criteria be the abundance of the stock of fish (stock size) and the level or

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Establishing the Fishing Capacity Reduction Program

Excess fishing capacity (overcapitalization) decreases fisheries earnings, complicates fisheries management, and imperils fisheries conservation. A quarter century after the Magnuson Act, most fisheries have excess capacity. The SFA acknowledges this by amending the Magnuson-Stevens Act to include the creation of a Fishing Capacity Reduction Program to provide capacity reduction assistance. This is commonly called "buyback."

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This is the second in a series of updates on National Marine Fisheries Service implementation of Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Throughout issues of the SFA Bulletin, "M-SFCMA §", followed by a section number, will identify specific sections of the Magnuson-Stevens Act. Acronyms commonly used in this Update include: AP (Advisory Panel), EFH (Essential Fish Habitat), FMP (fishery management plan), and HMS (Highly Migratory Species).

From the Director

-- Dr. Gary Matlock., Director, Office of Sustainable Fisheries

Fisheries management has entered a new era. During Congressional hearings regarding reauthorization of the Magnuson-Stevens Act, NOAA testified that fisheries in this country were at a crossroads: a large number of our fish stocks were in decline, with many already overfished. Congress recognized the problem and took decisive action by passing the Sustainable Fisheries Act (SFA). This historic piece of legislation redefined conservation and management goals for living marine resources within the Exclusive Economic Zone. By passing the SFA, Congress declared that we must take action to ensure that the Nation realizes the full benefits from our fishery resources. In particular, Congress mandated that fish stocks be managed to and maintained at their maximum sustainable levels. Overfished stocks must be rebuilt to this level as soon as possible, but no longer than 10 years. In addition, Congress enacted major provisions regarding bycatch, essential fish habitat, fishing dependent communities, data collection, fisheries research, vessel registration and numerous other items. By October 11, 1998, it is likely that all FMPs will have to be amended to comply with the requirements of the SFA.

NMFS is tasked with the overall job of implementing the SFA. This is indeed a tremendous responsibility that requires close cooperation among all components of NMFS, the Regional Fishery Management Councils, and other Federal and State agencies. NMFS has developed an implementation plan and an activity tracking system, and has undertaken numerous tasks assigned by Congress. We have made much progress as noted in this newsletter. More importantly, we are establishing the foundation for all future management activities that will guide the work of the Councils and NOAA in the coming year. Foremost of these activities is the revision of and addition to the National Standards Guidelines. The Guidelines, in general, and National Standard 1, in particular, will serve as the template for rebuilding our fisheries. We have embarked on a daunting task, but one that can result in tremendous benefits for the Nation. With the help of the Councils and the cooperation of the public, I am confident that we will realize those benefits.

National Standards Guidelines

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rate of harvesting or other activities that result in fish mortality. When the abundance of the stock falls below the level that can produce MSY, it would be considered overfished, and when the level of harvest is so high that the stock could fall below the level that can produce MSY, overfishing would be occurring.

The recent revisions to the Magnuson-Stevens Act requires each FMP to specify objective and measurable criteria for determining when a stock is overfished or when overfishing is occurring, and requires the Secretary to report annually to Congress and the Councils on the status of the fisheries. If the Secretary determines that a fishery is overfished or approaching an overfished condition, the Council must be notified and must revise the management program to stop overfishing and rebuild the stocks. In this case, the Council must make the necessary adjustments within 1 year. Furthermore, the Magnuson-Stevens Act states that overfished stocks must be rebuilt as soon as possible but no longer than 10 years, except in certain special circumstances. If the Council does not submit an amendment to the managment program within the required timeframe, the Secretary is instructed to take action within 9 months.

Nationad standard 2 requires fishery managers to use the best scientific information available in developing fishery conservation and management measures. This applies to all information used in the management process such as biological, ecological, economic, and social data. In addition, the Guidelines state that an FMP must specify the information fishermen and processors will be required to submit to the Secretary and the scientific information that must be collected for management purposes. Finally, the Guidelines under this standard include a requirement for the development and annual review of a Stock Assessment and Fishery Evaluation Report (SAFE), which acts as a compendium of all relevant scientific data, fishery based information, and associated analyses.

A revision to Natioal Standard 2 is the addition of the need for information on marine ecosystems and fishing communities. In addition, the requirements for a SAFE report will be expanded to contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, as well as necessary information to specify overfishing criteria.

National Standard 8 includes the requirment that conservation and management measures, consistent with the conservation requirements of the Magnuson-Stevens Act, take into consideration the importance of fishery resources to fishing communities. This standard establishes goals of providing for the sustained participation of those communities and of minimizing adverse economic impacts to the extent practicable. In the process of developing or revising management programs, this standard requires fishery managers to consider the importance of the fisheries to communities, and to providing those communities with continuing access to the fishery resources. However, such consideration is limited to the extent that it does not compromise the conservation goals of the Magnuson-Stevens Act.

A "fishing community" is defined as a community which is "substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social an deconomic needs." [MSFCMA §3(14)]. The proposed Guidelines recommend that a fishing community not be limited to the boundaries of a particular city or town. Furthermore, the Guidelines recognize that the Magnuson-Stevens Act does not mandate the maintenance of any particular level or distribution of participation in one or more fishing activities. Because changes in the fisheries are inevitable, particularly regarding species targeted, gear utilized or the mix of seasonal fiisheries conducted during the year, the requirements of the Standard are interpreted to apply only to a consideration of continued overall access to fishery resources. Therefore, there can be no guarantee that fishermen or others be able to use a particular gear type, to harvest a particular species or to fish during a particular time of the year.

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The SFA Update is published periodically by the Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910. Suggestions and comments should be sent to the above address, ATTN: SFA Update.

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Implementing the Sustainable Fisheries Act: NMFS Accomplishments to Date

Immediately after the SFA was enacted, NMFS created a plan to implement the SFA. The SFA Implementation Plan contains numerous, detailed tasks necessary to further implementation of the SFA. A computerized tracking system of the Implementation Plan tasks is available on the SFA homepage online (http://kingfish.ssp.nmfs.gov/sfa). The National Oceanic and Atmospheric Administration (NOAA) Office of General Counsel for Fisheries (GCF) incorporated the SFA changes and amendments into a consolidated version of the M-SFCMA. It is available at the same web site. Another document prepared by GCF, also located on the SFA homepage is A Guide to the Sustainable Fisheries Act. This document summarizes and interprets each section of the SFA and includes legislative history on most sections. Since SFA became law, NMFS has succeeded in implementing many of the requirements of the SFA. A summary of completed tasks follows.

• November 1996 - Amendments to definitions in the Atlantic Coastal Fisheries Cooperative Management Act were reviewed. Necessary changes have been made. NMFS also prepared and sent guidance to the Regional Fishery Management Councils regarding the new review schedule for Fishery Management Plans (FMPs) and FMP amendments by the Secretary of Commerce (Secretary). An Advance Notice of Proposed Rule-making (ANPR) on Essential Fish Habitat (EFH), was published in the Federal Register.

• December 1996 - A letter report to Congress regarding plans for implementing bycatch reduction agreements under the SFA was prepared and transmitted. In addition, a revised schedule for key Secretarial events was distributed.

• January 1997 - Through its Northeast Fisheries Center, NMFS prepared and submitted a report to Congress on the New England fishing capacity reduction initiative.

• February 1997 - NMFS surveyed all Federal FMPs to identify existing standards and measures implemented for the purpose of reducing bycatch and prepared a report of its findings for the State Department. A notice seeking nominations to HMS Advisory Panels (APs) was published in the Federal Register.

• March 1997 - A notice requesting nominations to an Ecosystem Principles AP, an ANPR regarding a Central Lien Registry System for Limited Access Permits, and a Rule regarding the lobster fishery in Maine "pocket" waters were published in the Federal Register.

• April 1997 - A Notice requesting nominations to Red Snapper Peer Review Panels, a notice announcing membership of two HMS APs, a Proposed Rule regarding EFH, and a notice requesting comments on other HMS APs were published in the Federal Register.

• May 1997 - A Final Rule on Foreign Fishing Vessels in Internal Waters, a Rule regarding Negotiated Conservation and Management Procedures, and a notice of the membership of the Ecosystem Principles AP were published in the Federal Register.

• **June /July 1997 - Proposed National Standard Guidelines were developed and published in the Federal Register [62 FR 41907], the 45-day comment period for these proposed guidelines ends September 18 (see related article, page 1); a proposed rule containing procedures for soliciting nominations from Treaty Tribes with fishing rights in California, Idaho, Oregon and Washington, and for appointing a new Indian Tribal representative to the Pacific Fishery Management Council was published in the Federal Register [62 FR 35468], the comment period for this proposed rule has been extended to August 11; the HMS Pelagic Longline Fishery AP met July 14; the HMS Billfish AP met July 22-23; and the Red Snapper Statistics Peer Review Panel met July 21-25.**

Finally, NMFS has held more than 55 briefings, workshops and/or hearings on the SFA or implementation activities of the SFA since the beginning of December 1996.

Buyback

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Buyback's objective is "...to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time" [M-SFCMA §312(b)]. Buyback pays fishermen to surrender their fishing permits and either scrap their fishing vessels or subject them to title restrictions preventing further fishing.

Buyback costs can be paid by the Federal Government, by other public or private organizations, or by the fishing industry itself. Recognizing that some or all industry-funded buybacks would require financing, the SFA also amended Title XI of the Merchant Marine Act to provide buyback loans.

These loans may be one of the most practical ways to fund some or all buyback costs. Title XI provides the lending authority. The borrower is, in effect, everyone who fishes in a post-buyback fishery. A buyback loan is repaid exclusively by a fee that fish buyers deduct from the gross proceeds of all post-buyback fishing trips. The loan's interest rate is 2% over the Federal Treasury's cost of money. A loan's repayment maturity can be for up to 20 years. The industry fee will be whatever is required to repay the buyback loan. The fee is adjustable from year-to-year, but may never exceed 5% of trip proceeds.

Industry-funded buybacks require harvester referenda in which in which at least two-thirds of voters vote in favor of industry fees. Government-funded buybacks require no referenda.

Buyback is available only in limited-access fisheries whose fisheries management plans (1) effectively prevent replacing bought-back capacity and (2) manage harvests by total allowable catches. Buyback must "...achieve measurable and significant improvements in the conservation and management of...[a] fishery..." or end overfishing or rebuild stocks [M-SFCMA §312(b)(1)(A)]. NMFS cannot conduct or finance a buyback unless a Fishery Management Council requests it.

Buyback assistance provide a way for the harvesting industry in each fishery to organize and fund the retirement of its excess harvesting competition. This can make both fisheries harvesting and fisheries management and conservation more efficient and effective.

NMFS plans soon to publish an advance notice of proposed rulemaking about how best to implement buyback assistance.

National Standards Guidelines

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National standard 9 requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Bycatch is defined as fish that are harvested but are not sold or kept for personal use. Bycatch occurs when fishermen take fish that cannot be used, when they catch more than they are able to retain, or when they are required to discard fish to comply with applicable fishing regulations. Bycatch can also include fish that are killed as they come in contact with fishing gear but are not landed.

The bycatch standard is important because fish that are killed but not used are wasted, which can have a serious adverse effect on the status of the resource and the ecosystem. Bycatch and bycatch mortality can be reduced by changing how, when, where, and how many fish are caught and subsequently discarded. Bycatch mortality can also be reduced through better handling techniques before the fish are released.

National standard 10 requires that conservation and management measures, to the extent practicable, promote the safety of human life at sea. This standard recognizes that fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. It directs the Councils to try to reduce that risk when developing management measures, so long as those measures can still meet the requirements of the other standards and achieve the goals of the management program. The Guidelines also address areas that should be considered in achieving the objective of this standard, including the operating environment of the vessel, gear and vessel loading requirements, and limited seasons and areas for specific fisheries. Finally, the Guidelines provide a list of alternatives that could be included in an FMP that could serve to reduce the potential impacts on safety of human life at sea.

Upcoming Review Panel Meetings

NMFS will hold the last two of three Red Snapper Peer Review Panel meetings this month. The Economics Panel will meet August 18-21 at the Holiday Inn Crown Plaza, 333 Poydras St., New Orleans, Louisiana. The Science & Management Panel will meet August 25-29 at the Windham Hotel, 701 Convention Center Blvd., New Orleans, Louisiana. Both meetings will run from 8:00 a.m. to 5:00 p.m. daily. For further information, contact John Witzig, NMFS Office of Science & Technology, 1315 East-West Hwy., Silver Spring, MD 20910.

The first meeting of the NMFS Ecosystem Principles Advisory Panel will be held at the Doubletree Park Terrace, 1515 Rhode Island Ave., Washington, DC, September 10-11. For further information, contact Ned Cyr, NMFS Office of Science & Technology, 1315 East-West Hwy., Silver Spring, MD 20910.

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